

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TEXAS
WACO DIVISION

IN RE: § CHAPTER 11
§
DARYL GREG SMITH and, § CASE NO. 21-60162-RBK-11
CANADIAN RIVER RANCH, LLC § CASE NO. 21-60163-RBK-11
§ Jointly Administered Under
§ Case No. 21-60162-rbk
Debtors. §

**FIRST INTERIM APPLICATION FOR ALLOWANCE OF COMPENSATION
AND REIMBURSEMENT OF EXPENSES INCURRED
FOR GREGORY S. MILLIGAN, CHAPTER 11 TRUSTEE**

This pleading requests relief that may be adverse to your interests.

If no timely response is filed within 21 days from the date of service, the relief requested herein may be granted without a hearing being held.

A timely filed response is necessary for a hearing to be held.

TO THE HONORABLE RONALD B. KING,
UNITED STATES BANKRUPTCY JUDGE

COMES NOW, Gregory S. Milligan, (“**Applicant**” or “**Trustee**”) and makes his First Interim Application for Allowance of Compensation and Reimbursement of Expenses Incurred (the “**Application**”), in his capacity as Chapter 11 Trustee for Daryl Greg Smith (“**Smith**”) and Canadian River Ranch, LLC (“**CRR**”, and collectively with Smith, the “**Debtors**”) for the period from June 29, 2021 through June 30, 2022 (the “**Application Period**”) pursuant to the provisions of 11 U.S.C. §330 and in support thereof, would respectfully show the Court as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this Application pursuant to the provisions of 28 U.S.C. §1334 and §157. This matter is a core proceeding pursuant to

28 U.S.C. §157(b)(2). This Application is filed pursuant to 11 U.S.C. §§326 and 330 of chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”).

NARRATIVE SUMMARY

A. Case Background

2. The Debtors each filed a voluntary petition for relief under the Bankruptcy Code on April 9, 2021 (the “**Petition Date**”).

3. On May 18, 2021, the Court ordered that the Debtors’ cases (the “**Bankruptcy Cases**”) be jointly administered. *See* Order Granting Debtors’ Motion for Joint Administration [Doc. 29].

B. Appointment of Trustee

4. On June 29, 2021, the United States Trustee requested appointment of the Trustee in this matter, and the Court approved such appointment. *See* Order Approving Appointment of Gregory S. Milligan as Chapter 11 Trustee [Doc. 91].

C. Determination of Statutory Fees

5. During the Application Period, Applicant served as the Chapter 11 Trustee and now makes this Application for the award of reasonable compensation pursuant to §§ 326 and 330 of the United States Bankruptcy Code.

6. During the Application Period, Applicant was responsible for \$3,317,178.34 in disbursements from the Smith estate. *See* **Exhibit A**. Based upon the limitations on trustee compensation as set forth in 11 U.S.C. §326, the maximum amount of allowable trustee fees is \$122,765.35. *See* **Exhibit B**.

D. Request for Fees and Expenses

7. The Trustee in this Application is seeking interim approval of \$122,765.35 in fees.

8. The Trustee is also seeking reimbursement of \$3,739.47 in actual and necessary expenses incurred by the Trustee, as summarized in **Exhibit C** attached hereto.

9. No prior fee applications have been filed by Applicant in connection with his services provided in this case under Chapter 11 and no payments of fees or expenses have been received by Applicant.

10. Applicant has previously filed substantive and lengthy disclosures in these Bankruptcy Cases and does not hold nor has he represented at any time during this engagement any interest adverse to the estate, and has been at all times a disinterested party. Applicant has made no agreement for the sharing of compensation for services rendered in or in connection with this case with any other person, other than the individual members of the Applicant's firm.

11. Applicant has attached as **Exhibit D** a summary which lists the total hours billed of 864.6 hours during the Application Period. If billed at his standard hourly rate, Applicant's compensation would total \$475,330.00.

E. Description of Services Performed and Results Obtained

12. During the Application Period, the Trustee familiarized himself with the constituents in the case as well as the assets and liabilities of the estate and prioritized the issues that needed to be addressed. In addition, the Applicant was involved in the following:

- Addressing issues related to the perseverance of the solar lease;
- Learning about the sales efforts undertaken to date in Oklahoma and how best to position the property for marketing and sale going forward, including the retention of a broker team to continue marketing the property;
- Filing amended schedules and statements of financial affairs to provide more accurate and complete information to the Court and parties in interest;
- Litigating issues related to the exemption asserted by D. Smith in his 90% interest in Caddoa and getting appointed as manager of such entity;

- Negotiating compromises of controversies with Tekell and Tekell, LLP and Hanszen Laporte, LLP;
- Negotiating compromises of controversies with the largest secured creditor in the Smith estate, Karen Smith (“**K. Smith**”), including pre-petition claims, post-petition claims, and the use of cash collateral;
- Negotiating compromises of controversies with the largest unsecured creditor in the Smith estate, David Wise;
- Negotiating compromises of controversies with a hunting tenant on the Oklahoma ranch, Boomer State Outdoors;
- Identifying title issues that needed to be addressed in Texas and Oklahoma to facilitate the sales process;
- Selecting brokers to market and sell the 913 acre property in Bosque County, Texas, that resulted in gross proceeds of approximately \$4.9MM;
- Evaluating options for monetizing the solar lease and conducting negotiations with multiple potential stalking horse bidders;
- Ensuring the filing of all necessary tax filings for the Smith estate and CRR estate;
- Responding to Smith’s multiple appeals and attempt to stay further critical actions in the Smith estate; and
- Preparing for an exit from chapter 11.

F. Availability of Funds

13. As noted, the Applicant negotiated a settlement with K. Smith that was approved by this Court pursuant to the *Order (I) Approving the Settlement Agreement Among the Trustee on Behalf of the Debtors, Caddoa Creek Ranch, LLC, and Karen Annette Smith Pursuant to Federal Rule of Bankruptcy Procedure 9019, and (II) Authorizing the Trustee to Enter into a Restructuring Support Agreement* entered on June 27, 2022 [Dkt. 476] (the “**K. Smith Order**”). Pursuant to the K. Smith Order, among other things, the Bosque Waterfall (as defined therein) was approved that, among other things authorized the use of cash collateral and included a carveout reserve for Trustee fees in the amount of \$135,000.

14. The payment sought pursuant to this Application is what was contemplated by the referenced provisions of the Bosque Waterfall and is consistent with the K. Smith Order.

CONCLUSION

15. For all of the foregoing reasons, the Trustee requests that this Application be granted.

PRAYER FOR RELIEF

WHEREFORE, the Applicant respectfully prays that the Court (a) allow on an interim basis the reasonable compensation for professional services rendered in the amount of \$122,765.35 for the Application Period; and (b) reimbursement of expenses in the amount of \$3,739.47, and (c) provide the Applicant all such other and further relief as to which he has shown himself to be justly entitled.

DATED: July 13, 2022

Respectfully submitted,

By:  _____
Gregory S. Milligan
8911 N. Capital of Texas Highway, Suite 2120
Austin, Texas 78759
gmilligan@harneypartners.com

CHAPTER 11 TRUSTEE OF
DARYL GREG SMITH AND
CANADIAN RIVER RANCH, LLC

SUBMITTED BY:

WALLER LANSDEN DORTCH & DAVIS, LLP

By: /s/ Morris D. Weiss

Morris D. Weiss

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COUNSEL TO GREGORY S. MILLIGAN,
CHAPTER 11 TRUSTEE

CERTIFICATE OF SERVICE

I hereby certify that the above and foregoing document has been served upon all parties on the attached service list electronically via the Court's ECF system or by first class mail on July 13, 2022.

/s/ Morris D. Weiss

Morris D. Weiss

LIMITED SERVICE LIST

Debtors (via mail and email)

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United States Trustee (via ECF)

Gary W. Wright & Shane P. Tobin
Office of the United States Trustee
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Austin, TX 78701

Chapter 11 Trustee (via ECF)

Gregory S. Milligan
3800 N. Lamar Blvd., Suite 200
Austin, Texas 78756

Secured Creditors

Farm Credit of Western Oklahoma
513 S. Mission St.
Anadarko, OK 73005

Farm Credit Of Western Oklahoma, ACA
Brian McEntire, VP/Branch Manager Tuttle
PO Box 790, 4955 Farm Credit Dr.
Tuttle, OK 73089

Internal Revenue Service
PO Box 7346
Philadelphia, PA 19101

Karen Annette Smith
700 Nettleton Dr.
Southlake, TX 76092

**20 Largest Unsecured Creditors
(Combined)**

Bank of America
Attn: Bankruptcy Department
475 Cross Point Pkwy
P. O. Box 9000
Getzville, NY 14068

Boomer State Outdoors, LLC
12384 West 81st Street South
Sapulpa, OK 74066-8141

Catherine Aileen Smith
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Central TX Radiological Associates, PA
3206 4th Street
Longview, TX 75695

City of Fort Worth
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Frost-Arnett Company
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(via ECF)

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Friendswood, TX 77549

EXHIBIT A

Disbursements through June 30, 2022

<u>Disbursement</u>	<u>Trustee Bank Account</u>	<u>Date</u>	<u>Amount</u>	<u>Cumulative Disbursed</u>
Bosque County IRS Tax Lien	TSCB - Main Operating	9/30/2021	(8,012.09)	(8,012.09)
3Q21 UST Fee	TSCB - Main Operating	11/12/2021	(250.00)	(8,262.09)
Canadian Valley Electric Coop Deposit - Check 1003	TSCB - Main Operating	2/10/2022	(2,000.00)	(10,262.09)
4Q21 UST Fee - Check 1002	TSCB - Main Operating	2/17/2022	(250.00)	(10,512.09)
2021 Property Taxes - Bosque County - Check 1004	TSCB - Main Operating	2/22/2022	(2,025.16)	(12,537.25)
Eufaula Abstract & Title - Check 1005	TSCB - Main Operating	3/15/2022	(11,000.00)	(23,537.25)
Canadian Valley Electrical Coop - Check 1006	TSCB - Main Operating	3/15/2022	(23.00)	(23,560.25)
Canadian Valley Electrical Coop - Check 1007	TSCB - Main Operating	3/15/2022	(71.00)	(23,631.25)
George Adams & Co - Bond Premium - Check 1008	TSCB - Main Operating	3/16/2022	(219.00)	(23,850.25)
Kenneth Leatherwood, Survey Update - Check 1009	TSCB - Main Operating	3/16/2022	(6,824.04)	(30,674.29)
Stuart Cammack, Landman fees - Check 1010	TSCB - Main Operating	3/15/2022	(4,237.02)	(34,911.31)
Canadian Valley Electrical Coop - Check 1011	TSCB - Main Operating	4/8/2022	(88.00)	(34,999.31)
Canadian Valley Electrical Coop - Check 1012	TSCB - Main Operating	4/8/2022	(33.00)	(35,032.31)
Canadian Valley Electrical Coop - Check 1013	TSCB - Main Operating	5/10/2022	(59.00)	(35,091.31)
Canadian Valley Electrical Coop - Check 1014	TSCB - Main Operating	5/10/2022	(33.00)	(35,124.31)
1Q22 UST Fee - Check 1015	TSCB - Main Operating	5/12/2022	(250.00)	(35,374.31)
90% of payments made by Thomas Title - Bosque 913 Closing	Thomas Title	5/12/2022	(268,762.73)	(304,137.04)
Gary Adams & Co - Bond Premium - Check 1017	TSCB - Main Operating	6/14/2022	(2,486.00)	(306,623.04)
Canadian Valley Electrical Coop - Check 1018	TSCB - Main Operating	6/22/2022	(33.50)	(306,656.54)
Canadian Valley Electrical Coop - Check 1019	TSCB - Main Operating	6/22/2022	(60.90)	(306,717.44)
Wire to Caddoa Creek Ranch	TSCB - Main Operating	6/28/2022	(100,000.00)	(406,717.44)
Wire to Law Office of Gary Nickelson (on behalf of Karen Smith)	TSCB - Main Operating	6/28/2022	(1,790,889.00)	(2,197,606.44)
Wire to Karen Smith	TSCB - Main Operating	6/28/2022	(500,000.00)	(2,697,606.44)
Wire to Kelcie Hibbs (William M Warren PLLC)	TSCB - Main Operating	6/28/2022	(119,021.90)	(2,816,628.34)
Bank Fees	TSCB - Main Operating	6/30/2022	(550.00)	(2,817,178.34)
Wire to Waller Law - Attorney Fees	TSCB - Professional Fee Reserve	6/29/2022	(471,319.81)	(3,288,498.15)
Wire to Weaver - Tax Professional	TSCB - Professional Fee Reserve	6/29/2022	(10,251.36)	(3,298,749.51)
Wire to Harney Partners - Financial Advisor Fees	TSCB - Professional Fee Reserve	6/29/2022	(18,428.83)	(3,317,178.34)

EXHIBIT B

Section 326 Compensation Calculation

Chapter 11 Trustee Compensation per Section 326

Disbursements:		Fee Percentage		Fees
\$0	to \$5,000	@ 25%	=	\$1,250.00
\$5,000	to \$50,000	@ 10%	=	\$4,500.00
\$50,000	to \$1,000,000	@ 5%	=	\$47,500.00
\$1,000,000	to \$3,317,178.34	@ 3%	=	\$69,515.35
				\$122,765.35

EXHIBIT C

Itemization of Trustee Expenses

Date	User	Expense Category	Qty	Description	Rate (\$)	Billable (\$)
07/20/21	Greg Milligan	Taxi	1	Uber charge for OKC trip (airport to hotel)	\$ 22.99	\$ 22.99
07/20/21	Greg Milligan	Taxi	1	Uber charge for OKC trip (hotel to rental car company)	\$ 20.69	\$ 20.69
07/20/21	Greg Milligan	Hotel	1	Hotel for OKC trip (Home2Suites by Hilton)	\$ 135.82	\$ 135.82
07/20/21	Greg Milligan	Airfare	1	Airfare - Roundtrip Austin to OKC (SWA)	\$ 526.96	\$ 526.96
07/20/21	Greg Milligan	Car Rental	1	Car rental OKC (Budget)	\$ 785.55	\$ 785.55
08/20/21	Greg Milligan	UST Fees	1	Q2 UST fees paid from HMP Chase account	\$ 250.00	\$ 250.00
09/27/21	Greg Milligan	Shipping - FedEx	1	FedEx of abstracts to Matt Skalka at Thomas Title	\$ 23.69	\$ 23.69
09/28/21	Greg Milligan	Airfare	1	Southwest for Oct 6 to Oct 8 OKC trip	\$ 442.96	\$ 442.96
10/06/21	Greg Milligan	Taxi	1	Airport to Hotel	\$ 34.50	\$ 34.50
10/08/21	Greg Milligan	Parking	1	Airport parking for OK ranch tour	\$ 34.00	\$ 34.00
10/08/21	Greg Milligan	Hotel	1	Two nights at Sheraton OKC	\$ 311.10	\$ 311.10
10/08/21	Greg Milligan	Taxi	1	Uber from hotel to airport	\$ 35.06	\$ 35.06
11/02/21	Greg Milligan	Meals	1	Lunch meeting with D. Smith	\$ 60.00	\$ 60.00
02/09/22	Greg Milligan	Shipping - UPS	1	UPS overnight security deposits to Canadian Valley Electric Co-op.	\$ 50.88	\$ 50.88
02/26/22	Greg Milligan	Shipping - FedEx	1	Heise lease termination letter	\$ 31.36	\$ 31.36
02/28/22	Greg Milligan	Shipping - FedEx	1	Payment to Eufaula Abstract & Title Co.	\$ 26.78	\$ 26.78
03/04/22	Greg Milligan	Shipping - FedEx	1	Releases of lis pendens to Thomas Title	\$ 26.37	\$ 26.37
03/09/22	Greg Milligan	Shipping - FedEx	1	FedEx of original Bosque 913 signatures to Thomas Title	\$ 26.43	\$ 26.43
05/04/22	Greg Milligan	Shipping - FedEx	1	Bosque 913 original deeds to Thomas Title	\$ 28.16	\$ 28.16
05/23/22	Greg Milligan	Mileage	97	Austin to San Antonio	\$ 0.56	\$ 54.32
05/24/22	Greg Milligan	Mileage	97	San Antonio to Austin	\$ 0.56	\$ 54.32
05/27/22	Greg Milligan	Case Expense	1	LoneTree research (April 1 to April 30)	\$ 462.30	\$ 462.30
05/28/22	Greg Milligan	Hotel	1	Hotel night before KAS mediation (Emily Morgan)	\$ 273.91	\$ 273.91
06/02/22	Greg Milligan	Shipping - FedEx	1	Bond premium check to George Adams & Co Insurance	\$ 21.32	\$ 21.32
					\$ 3,739.47	

EXHIBIT D

Trustee Hours

<u>Month</u>	<u>Hours</u>
Jun-21	15.8
Jul-21	162.5
Aug-21	123.5
Sep-21	78.2
Oct-21	67.0
Nov-21	65.9
Dec-21	22.3
Jan-22	55.8
Feb-22	77.6
Mar-22	78.0
Apr-22	25.4
May-22	51.1
Jun-22	41.5
Total through 6/30/22	864.6

Fees if billed hourly

Hourly Rate	\$ 550.00
Hourly Fees	<u>\$ 475,530.00</u>